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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,912	01/24/2002	Mustafa Akram	H 3933 PCT/US	7117
423	7590	07/29/2005	EXAMINER	
HENKEL CORPORATION THE TRIAD, SUITE 200 2200 RENAISSANCE BLVD. GULPH MILLS, PA 19406			ELHILLO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/937,912	AKRAM ET AL	
	Examiner	Art Unit	
	Eisa B. Elhilo	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 10 May 2005.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 14, 16, 17, 19-28, 31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 14, 16, 17, 19-28, 31 and 32 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

- 1 This action is responsive to the amendment filed on May 10, 2005.
- 2 The rejection of claims 14, 16-17, 19-23, 26-28 and 31-32 under 35 U.S.C. 103(a) as being unpatentable over Hawkins et al. (US 5,843,193) in view of Akram et al. (US 5,494,489) is maintained for the reasons set forth in the previous office action filed on 2,11,2005.
- 3 The rejection of claims 24-25 under 35 U.S.C. 103(a) as being unpatentable over Hawkins et al. (US 5,843,193) in view of Akram et al. (US 5,494,489) and further in view of Cotteret et al. (US 5,580,357) is maintained for the reasons set forth in the previous office action filed on 2,11,2005.

Response to Applicant's Arguments

- 4 Applicant's arguments filed 5/10/2005 have been fully considered but they are not persuasive.

With respect to the rejection of claims 14, 16-23,26-28 and 31-32 under 35 U.S.C. 103(a) over Hawkins et al. (US' 193) in view of Akram et al. (US' 489), Applicant argues that the combination of the references is improper because there is no motivation or suggestion to combine the references. Applicant also argues that Akram et al. (US' 489) teaches a wary from forming applicant's combination of the formula I compound with the cationic conditioning agent disclosed in Hawkins because of the objective set forth in the Akram (US' 489) to replace the use of a conditioning agent with the Akram formula I compound.

The examiner respectfully disagrees with the above arguments because the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or

motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Hawkins et al. (US' 193) as a primary reference teaches a hair dyeing composing cationic conditioning agent of quaternary ammonium salts (see col. 9, lines 50-67 and col. 10, lines 1-14), dye precursors (primary intermediates) (see col. 2, line 17-67) and anionic tensides (anionic surfactants) (see col. 7, line 9). Akram et al. (US' 489) in analogous art of hair dyeing formulation, teaches and suggests the use of phosphoric acid ester-trichloride phospholipids EFA in a hair coloring composition for improving the properties of the composition (see col. 10, lines 4, lines 48-53). Therefore, this is a sufficient motivation to one having ordinary skill in the art to be motivated to incorporate the phospholipids compounds as taught by Akram et al. (US' 489) in the dyeing composition of Hawkins et al. (US' 193) with the reasonable expectation of success for improving the dyeing properties of the composition.

With respect to the rejection of claims 24-25 under 35 U.S.C. 103(a) over Hawkins et al. (US' 193) in view of Akram et al. (US' 489) and further in view of Cotteret et al. (US' 347), Applicant argues that Cotteret et al. (US' 347) does not teach or disclose the claimed composition.

The examiner respectfully disagrees with the above argument for the same reasons mentioned above.

With respect to the arguments based on the declaration filed on May 10, 2005, the examiner's position is that the comparative data submitted in the declaration is not sufficient to

rebut any *prima facie* case of obviousness because the terms "clearly better" and "slightly better" are not clearly defined and distinguished the claimed invention from the prior art compositions.

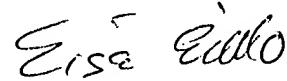
5 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Patent Examiner
Art unit 1751

July 27, 2005